Complainant's Exhibit No. 1

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March 6, 2001

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Re: Request For Immediate Governmental Action/Regulation Relating To DuPont's C-8 Releases In Wood County, West Virginia And Notice Of Intent To Sue Under The Federal Clean Water Act, Toxic Substances Control Act, And Resource Conservation And Recovery Act - NOTE: For Inclusion In USEPA Docket No. OPPTS-50639A

Ladies and Gentlemen:

Our law firm represents Wilbur Earl Tennant and Sandra K. Tennant (Route 3, Box 17, Washington, WV 26181, (304) 863-8787), James David Tennant and Della Marie Tennant (Route 3, Box 372, Parkersburg, WV 26101, (304) 863-5428), and Erwin Jackson Tennant (Route 3, Box 17A, Washington, WV 26181, (304) 863-6977) (collectively, the "Tennants") in connection with a lawsuit that is currently pending against E.I. duPont de Nemours & Co., Inc. ("DuPont") in Federal Court in Parkersburg, West Virginia, styled *Tennant v. E.I. duPont de Nemours & Co., Inc.*, Civil Action No. 6:99-0488 (S.D. W.Va.). The Tennants have sued DuPont in connection with the release of various pollutants and contaminants from DuPont's Dry Run Landfill in Wood County, West Virginia. (See Exhibit 133.) The Tennants believe that

such releases have resulted in and continue to result in personal injury and property damage to the Tennants, including the death of several hundred head of the Tennants' cattle and serious health problems for the Tennants.

During the course of the litigation, we have confirmed that the chemicals and pollutants released into the environment by DuPont at its Dry Run Landfill and other nearby DuPont-owned facilities may pose an imminent and substantial threat to health or the environment. More specifically, information currently available to the Tennants confirms that DuPont has been releasing and continues to release into the air, land, and water, including human drinking water supplies, an essentially unregulated, confirmed animal carcinogen known as ammonium perfluorooctanoate (a/k/a C-8/FC-143/APFO/PFOA) (CAS No. 3825-26-1) (hereinafter "C-8").[1] Hundreds of head of cattle, along with numerous deer, fish, frogs, and other animals, have died in the area affected by the C-8 releases, and area residents exposed to the C-8 releases have been suffering ill health effects that are believed to be associated with C-8 exposure. For example, one of our clients, Wilbur Earl Tennant, has been in and out of the hospital repeatedly over the last few years suffering from respiratory problems, chemical burns, and other health problems after exposure to materials from the Dry Run Landfill.

For the reasons discussed in more detail below, the Tennants hereby request that each of your agencies intervene in the Tennants' pending lawsuit and order the immediate investigation, assessment, containment, removal, and remediation of DuPont's C-8 releases into the environment from the Dry Run Landfill, including an order that DuPont immediately cease and desist all C-8 releases and that appropriate medical care/testing/evaluation be provided to the Tennants. The Tennants also request that DuPont's permit to operate the Dry Run Landfill be immediately revoked and that all operations at that landfill be suspended until adequate scientific demonstrations are made to prove that the C-8 releases have been abated and will not recur.

In addition, the Tennants specifically request that USEPA exercise its authority under TSCA to order DuPont to immediately cease all manufacturing activities involving C-8 until DuPont can prove through appropriate scientific testing and research that its usage of C-8 does not pose an unreasonable risk of injury to health or the environment. In the meantime, the Tennants request that your agencies take those steps necessary to begin regulating C-8 releases into the environment. In that regard, the Tennants request that, at a minimum, USEPA include C-8 among the chemicals that it proposed in October of 2000 to regulate under TSCA on the grounds that the chemicals "may be hazardous to human health and the environment." (See Exhibit 123.) The Tennants believe that the information recently obtained from DuPont regarding C-8's potential threat to human health, (see e.g., Exhibits 71, 125, and 126), warrants regulation of C-8 at least as aggressively as the related perflourinated chemicals manufactured by 3M.

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[1] Currently available information also indicates unusual levels of iodide/iodine, along with Triton in Dry Run Creek. (See Exhibit 91.)

This letter also constitutes notice on behalf of the Tennants and a class of other individuals similarly situated of their intent to bring citizen suit claims against DuPont in connection with DuPont's C-8 releases into air, land, and water from DuPont's Washington Works facility in Wood County, West Virginia under the Federal Clean Water Act ("CWA"), Toxic Substances Control Act ("TSCA"), and Resource Conservation and Recovery Act ("RCRA").[2] The factual and legal basis of such citizen suit claims is explained in detail below.

Additional documentation in support of the basic facts summarized below is available at our offices in Cincinnati, including a chronologically-organized database of the over 110,000 pages of documents produced to date by DuPont on this topic.

I. DuPont Has Used C-8 Primarily At Its Washington Works Plant In Wood County, West Virginia.

C-8 is a perfluorinated detergent/surfactant manufactured in the United States by 3M Company that DuPont uses in connection with its manufacture of Teflon®-related products. (See Exhibits 1 and 118.)[3] DuPont has used C-8 as a reaction aid in its production of polytetrafluoroethylene (PTFE) and tetrafluoroethylene (TFE) co-polymers at its Washington Works facility outside Parkersburg, West Virginia since the early 1950s. (See Exhibit 118.) Wastes from the Washington Works' C-8 processes are either vented to the air following incineration, dumped into the Ohio River, sent to DuPont's Chambers Works facility in Deepwater, New Jersey for treatment and discharge, or disposed of at landfills. (See id.) The polymer product manufactured at the Washington Works is either sold directly to DuPont's customers (in the United States and abroad) or transferred to DuPont's Spruance Plant in Richmond, Virginia for use in the production of Teflon® and PTFE-coated fibers or transferred to DuPont's Parlin Plant in Parlin, New Jersey for use in the production of Teflon® finishes, some of which is then used in consumer cookware. (See id.) C-8 may remain in some of the products sold from DuPont's Washington Works, Spruance Plant, and Parlin Plant. (See id.) Some of DuPont's Teflon® materials have been used in medical implants that are inserted directly into the human body. (See Exhibit 132.)

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2 Please note that, although the Tennants already have filed claims against DuPont under the CWA and RCRA, these pending claims relate only to releases from DuPont's Dry Run Landfill. This letter provides notice of the Tennants' intention to also bring separate claims against DuPont under the CWA, TSCA, and RCRA with respect to releases from DuPont's nearby Washington Works plant in Wood County, West Virginia, on behalf of themselves and a class of others similarly situated.

3 ®DuPont's registered trademark.

II. DuPont Has Known That Excessive Exposure To C-8 Causes Adverse Effects.

DuPont has worked closely with 3M since at least the 1970s to investigate the toxic and carcinogenic effects of C-8 on animal and human health. (See id. and Exhibits 2, 24, and 49.) Through such company-sponsored studies, DuPont acquired knowledge by at least the early 1980s that C-8 was toxic and carcinogenic to animals, whether through inhalation, direct skin contact, or ingestion. (See Exhibits 12, 49, and 71.) Around the same time, DuPont also became aware that C-8 is biopersistent/bioaccumulative in animals and humans. (See Exhibits 30, 49 and 71.)[4]

In response to the mounting toxicity data on C-8, and because C-8 was essentially an unregulated chemical that, according to USEPA, had simply "sail[ed] under the agency regulatory radar screen" for decades, (see Exhibit 114), DuPont established in the 1980s its own internal standards for what it considered to be acceptable C-8 exposure levels for humans. For exposure to C-8 via air emissions/inhalation routes, DuPont determined that an "acceptable exposure limit" (AEL) for humans is 0.01 mg/m^3 (skin), with an acceptable "community exposure guideline" (CEG) for airborne emissions of 0.0003 mg/m^3. (See Exhibits 2-4, and 9.) For human exposure to C-8 through contaminated water, DuPont established a CEG of 1 ppb. (See id.) DuPont also began routine monitoring of the levels of C-8 in the blood of its own employees, including employees at Washington Works, as early as 1981, (see Exhibit 118), and began looking for alternatives to C-8. By 1993, DuPont believed it may have found a viable, less toxic alternative to C-8, (see Exhibit 42), but decided to keep using C-8 anyway.

Later in 1993, a study conducted by the University of Minnesota linked C-8 exposure with increased prostate cancer among human males. (See Exhibits 47 and 51.) By 1996, DuPont also had been informed that new tests were linking C-8 to DNA damage. (See Exhibit 60.) In response, DuPont, 3M, and others commissioned studies to further assess the potential effects of C-8 on humans through tests on monkeys. (See Exhibits 77, 84, 93, and 105.) By November of 1998, DuPont knew that one of the monkeys in the study receiving a 30 mg/kg dose of C-8 was suffering severe health effects. (See Exhibit 90.) By February of 1999, DuPont knew that one of the monkeys involved in the C-8 testing receiving the lowest dose of C-8 (3 mg/kg) had suffered such severe health effects that it had to be sacrificed. (See Exhibit 94.) By May of 1999, DuPont knew that a second monkey in the study had also suffered such severe health effects that it had to be sacrificed. (See Exhibits 103, 105, 107, 108 and 125.) The preliminary monkey study results also confirmed adverse liver effects among all of the monkeys in the study, regardless of exposure levels. (See id. and Exhibits 125 and 126.) Thus, because even exposure to the lowest

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[4] DuPont also became aware of evidence as early as 1981 that at least two children born to its Washington Works employees who worked with C-8 while pregnant appeared to have been born with birth defects similar to those observed among rats exposed to high levels of C-8. (See Exhibit 13.)

dose of C-8 during the studies (3 mg/kg) produced adverse observable effects, a "no observable effects level" (NOEL) could not be found for C-8 in primates. (See Exhibits 105, 126.)

3M eventually notified USEPA of the preliminary results of the monkey study in a filing under TSCA, Section 8(e) during November of 1999. (See Exhibit 111.) Within only a few months, USEPA notified 3M that it intended to pursue more rigorous regulation of the perfluorinated chemicals manufactured by 3M. (See Exhibits 113 and 120.) Soon thereafter, 3M publicly announced that it would "voluntarily" withdraw from the market all of its perfluorinated chemical products, including the C-8 that it sells to DuPont for use in DuPont's Teflon® products, and the chemicals 3M uses to make its Scotchguard® products. (See Exhibits 113 and 114.)[5]

After learning that DuPont was one of the principal users of 3M's C-8 product, USEPA's TSCA Division requested in April of 2000 that DuPont supply information regarding DuPont's usage and release of C-8 within the United States. (See Exhibit 112.) DuPont produced some C-8 research data to USEPA on May 25, 2000, (see Exhibit 115), followed by preliminary usage and release information in a letter dated June 23, 2000. (See Exhibit 118.) In its C-8 disclosure letter to USEPA, DuPont confirmed that it has used C-8 primarily at its Washington Works site and that it had released C-8 into the air, water, and land at the Washington Works, into water at its Parlin Plant, Spruance Plant, and Chambers Works, into soils at the Chambers Works, and into soil and water at the "Local," Letart, and Dry Run Landfills owned and operated by DuPont near the Washington Works in West Virginia. (See id.) DuPont did not, however, reference any of the results of the C-8 monkey studies. (See id.) On October 18, 2000, USEPA proposed to begin regulating most of 3M's perfluorinated chemicals under TSCA on the grounds that the chemicals "may be hazardous to human health and the environment." (See Exhibit 123 (65 Fed. Reg. 62319-33 (Oct. 18, 2000)).) USEPA deferred, however, regulation of C-8, pending further review of the information being obtained from 3M and DuPont. After receiving a draft of this letter in November of 2000, DuPont sent revised C-8 usage and release information to USEPA in a letter dated January 25, 2001. (See Exhibit 136.) As of today's date, however, the Tennants are not aware of the results of the C-8 monkey studies having been "finalized" or published.

III. DuPont Promised Not To Dispose Of Toxins Like C-8 In Its Dry Run Landfill.

In the early 1980s, DuPont approached the Tennants seeking to buy several hundred acres of the Tennants' property for the purposes of constructing a landfill near the base of Dry Run Creek in Wood County, West Virginia. (See Exhibit 14.) In response to initial resistance from the Tennants to the idea of selling any portion of their land for a landfill, DuPont promised the Tennants that no hazardous materials would ever be disposed of in the landfill. (See Exhibit 14.) After receiving DuPont's verbal and written assurances that no harmful chemicals would ever be disposed of in the proposed landfill and that the Tennants would be permitted to graze their

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[5] ®3M's registered trademark.

cattle along the adjacent Dry Run Creek,[6] the Tennants eventually agreed to sell a portion of their property to DuPont for construction of the "non-hazardous" landfill. DuPont received a permit to operate the Dry Run Landfill as an unlined, non-hazardous, solid waste landfill in 1982, and began actual landfilling operations at the Landfill in 1984. (See Exhibit 5.)

IV. DuPont Has Dumped Thousands Of Tons Of C-8 Wastes Into The Dry Run Landfill.

Soon after DuPont began operating the Dry Run Landfill in 1984, DuPont received the results of internal sampling confirming that C-8 was leaching into groundwater beneath three old, unlined anaerobic digestion ponds at the Washington Works that DuPont previously had used for the disposal of thousands of tons of C-8-soaked sludges. (See Exhibits 9, 17, 20, and 31.) DuPont's internal sampling indicated that, not only was C-8 getting into the groundwater that DuPont used for the Washington Works' drinking water, but C-8 also was migrating through the groundwater under the Washington Works and into the Lubeck Public Service District's ("Lubeck PSD's") immediately-adjacent public drinking water wells. (See Exhibits 17, 18, 20, and 31.) Internal DuPont sampling confirmed C-8 in the Lubeck PSD community drinking water supply as high as 1.5 ppb in 1984, (see Exhibits 17, 18, and 20), increasing to as high as 1.9 ppb in 1987, (see Exhibits 19 and 20), and further increasing to as high as 2.2 ppb in 1988 (see Exhibits 27 and 28. See also Exhibit 33.) All of these levels exceed DuPont's own 1 ppb CEG for community drinking water. (See Exhibits 2-4, and 9.)

Upon receipt of those results, DuPont decided to try to remove the source of the C-8 in the public and company drinking water supplies by digging up and removing the sludges from Washington Works' three anaerobic digestion ponds and dumping the tons of C-8-contaminated sludge[7] into the Dry Run Landfill. (See Exhibits 20, 21, 22, 23, and 26.) After DuPont submitted data to the West Virginia Division for Environmental Protection ("WVDEP") asserting that the sludges were "non-hazardous" under RCRA, WVDEP granted DuPont permission to dispose of approximately 7,100 tons of the sludge in the unlined Dry Run Landfill. (See Exhibits 21, 23, and 25.) DuPont completed the sludge disposal in 1988. (See Exhibit 6.)

Rather than abate the presence of DuPont's C-8 in the public drinking water supply, DuPont simply purchased the Lubeck PSD well property and the wells were moved approximately two miles further down-gradient from the Washington Works. (See Exhibits 9, 30, 31, and 97.) DuPont then notified its employees to immediately cease all sampling of the

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[6] DuPont even agreed to lease back to the Tennants for cattle pasture significant portions of the landfill property along the Dry Run Creek. Those leases remained in effect until the Tennants began complaining about the Dry Run Landfill to USEPA. (See Exhibit 5.)

[7] DuPont confirmed C-8 levels as high as 610 ppm in the sludge taken from the three ponds. (See Exhibit 9.)

former Lubeck PSD wells and to destroy all previously-drawn, unanalyzed Lubeck PSD well samples. (See Exhibit 29.)

Also in 1989, WVDEP informed DuPont that new landfill regulations had gone into effect in the State of West Virginia requiring existing, unlined landfills to be upgraded with more rigorous waste containment mechanisms, including liners and more extensive groundwater monitoring well systems. (See Exhibit 32.) In response, DuPont installed a series of new groundwater monitoring wells at its Dry Run Landfill and at its nearby, unlined Letart Landfill in Mason County, West Virginia where DuPont had been disposing of most of its Teflon® and other C-8 wastes from the Washington Works as non-hazardous solid waste since the 1960s. (See Exhibit 121.) After DuPont's initial groundwater sampling at the Letart Landfill confirmed the presence of C-8 at 0.7 ppm, (see Exhibit 9), DuPont began investigating whether any C-8 also was leaching out of the waste at the Dry Run Landfill. (See Exhibit 6.) By April of 1990, DuPont had confirmed that C-8 was, in fact, leaching from the Dry Run Landfill and discharging directly into the Dry Run Creek at levels as high as 1.6 ppm – more than 100 times DuPont's own internal standard for drinking water of 1 ppb. (See Exhibits 9, 35, 37, 41, and 136.) Soon thereafter, DuPont abandoned its efforts to seek a new permit for the Letart Landfill, and notified WVDEP that it had decided, instead, to simply close that landfill "for economic reasons." (See Exhibits 74 and 121.)[8] DuPont proceeded, however, with its efforts to get a revised permit for the Dry Run Landfill that would allow DuPont to continue to operate the landfill without having to install a liner. (See Exhibit 50.)

After confirming elevated C-8 levels in the water at Dry Run, DuPont began investigating how to get rid of the approximately 7,100 tons of C-8-contaminated sludge that it dumped into the landfill in 1988, which DuPont assumed was a source of the C-8 being detected in Dry Run Creek. (See Exhibits 7, 8 and 38.) Although DuPont initially notified WVDEP that it would remove the C-8-contaminated sludges from the Dry Run Landfill and dispose of the material at its Letart Landfill, (see Exhibits 36 and 39), DuPont simply moved the sludges to another location within the Dry Run Landfill in 1991. (See Exhibits 5 and 6.)

By the summer of 1993, WVDEP inspectors noticed increasingly excessive amounts of sediment and discoloration building up in the leachate collection ponds at the Dry Run Landfill. (See Exhibit 44.) In response, DuPont, despite knowledge that the leachate contained high levels of C-8 and despite knowledge that the Tennants' cattle were drinking the water in Dry Run Creek, ordered the drains on its leachate collection ponds opened for more than two weeks (after monthly sampling had been completed (see Exhibit 45)), so that the leachate could flow out of

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[8] After DuPont finally shut down its unlined, "non-hazardous" Letart Landfill in 1996, it began paying to dispose of its C-8-contaminated wastes at a RCRA hazardous waste facility in Alabama. (See Exhibit 121.)

the ponds and directly into the Dry Run Creek. (See Exhibits 46 and 86.)[9] Although WVDEP requested that DuPont submit acute toxicity sampling results for the leachate being discharged out of the sedimentation ponds, (see Exhibit 44), DuPont successfully avoided taking any such samples until four months after the original leachate had drained into the creek. (See Exhibit 48.) The acute toxicity results that DuPont did eventually submit to WVDEP confirmed a 15% mortality, even among neonates exposed to the water four months later. (See id.) In the meantime, dozens of the Tennants' cattle were dying along the Dry Run Creek bed and the Tennants and their family and friends were exposed to C-8.

By the fall of 1994, DuPont had adopted a corporate plan to start routinely dumping C-8 wastes into the Dry Run Landfill, in anticipation of the upcoming closure of its Letart Landfill. (See Exhibit 130.) Thus, in furtherance of this corporate plan, but without any authorization or approval of any kind from WVDEP, DuPont began dumping its C-8-contaminated biocake wastes into the Dry Run Landfill that Fall. (See Exhibits 5 and 86.) According to DuPont's own analyses, the biocake contained 930 ppb of C-8. (See Exhibits 6, 58, 85, and 87.) By the spring of 1995, discolored, foul-smelling water was observed being discharged out of the Dry Run Landfill sedimentation ponds into Dry Run Creek, with almost knee-high suds and foam present along the Dry Run Creek bed, which DuPont assumed contained C-8. (See Exhibits 5, 53, 54, 56, 88 and 91.) At the same time, even more of the Tennants' cattle were dying.

In response to repeated pleas from the Tennants that WVDEP force DuPont to take action to address the black odorous water and foam being discharged into the Dry Run Creek where their cattle were drinking and dying, WVDEP notified DuPont that it would need to start taking steps to address its improper discharges into Dry Run Creek and to upgrade the Dry Run Landfill. (See Exhibits 5 and 57.) After it became evident that little progress was being made by DuPont in response to WVDEP's requests,[10] the Tennants notified USEPA of the problem and provided copies of videotapes showing the discolored foaming water and dead animals along the Dry Run Creek bed. (See Exhibit 61.) Around the same time, the West Virginia Department of Natural Resources contacted DuPont in response to recent reports of numerous deer killed or dying in the area of the Dry Run Creek. (See Exhibit 59.) Despite such complaints, DuPont did nothing to disclose to the Tennants that C-8 was in the Dry Run Creek, nor did DuPont suggest in any way to the Tennants that their cattle should not be drinking the water in the Creek. (See Exhibit 74.) Instead, DuPont kept silent on the C-8 issue and took the position with the public and the regulatory agencies that all of the problems with the creek were simply the result of some high

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[9] DuPont also ordered the landfill drain opened in 1989 and again in 1995 so that the contents of the sedimentation pond could flow directly into Dry Run Creek, without any apparent notice to or permission from WVDEP. (See Exhibits 34 and 55.)

[10] Discolored, foaming water continued in Dry Run Creek throughout the remainder of 1995, 1996, 1997, 1998, and into 1999.) (See Exhibits 62, 63, 89, and 92.)

iron sulfide levels that had been fully addressed and completely resolved. (See Exhibits 5, 74, and 78.)[11]

In October of 1996, USEPA contacted DuPont and informed the company that it would be initiating an inspection of the Dry Run Landfill in response to the recent reports of hundreds of dead cattle and deer in the area of the Dry Run Creek. (See Exhibits 5, 64, and 68.) On the exact same day that DuPont learned of USEPA's pending inspection, Eli McCoy (with WVDEP's Water Division) forwarded to DuPont a draft complaint to aid DuPont in diffusing any potential enforcement action by USEPA relating to the discharge problems at the Dry Run Landfill. (See Exhibits 5 and 65.) Within a matter of weeks, DuPont completed its negotiations with the State and entered a consent decree to bar further governmental enforcement action in exchange for DuPont's payment to WVDEP of a $200,000 penalty. (See Exhibits 5, 67, and 69.) Soon thereafter Mr. McCoy left WVDEP and began working for the same DuPont consultant that would assist DuPont in complying with the consent decree - Potesta & Associates. (See Exhibit 73.)

As part of the December 1996 settlement with WVDEP, DuPont finally agreed to begin implementing upgrades to the Dry Run Landfill, such as installation of the type of liner that was required under the State's landfill regulations since 1988, and construction of a leachate collection system. (See Exhibits 66 and 69.) DuPont also finally agreed to cease the disposal of its biocake wastes at the Dry Run Landfill. (See id.) Thus, by the time USEPA actually commenced its ecological risk assessment activities in the Dry Run Landfill area in 1997, DuPont allegedly had stopped disposing of its C-8-contaminated biocake sludge at the Dry Run Landfill and had allegedly begun collecting C-8-contaminated leachate from the Landfill for transport to the Washington Works for treatment and discharge directly into the Ohio River. (See Exhibits 5, 70, and 72.)

By the end of 1997, USEPA released to DuPont a draft of its Ecological Risk Assessment Report for the Dry Run Landfill. (See Exhibit 75.) USEPA's report indicated that, although adverse impacts were clearly evident among numerous animals, plants, and other wildlife in the area of the Dry Run Creek, USEPA had not been able to identify any particular known, regulated chemical as the clear cause of the observed problems. (See id. at 52) USEPA, therefore, recommended further assessment and identification of numerous "tentatively identified compounds" that had been detected in various environmental media in the area of Dry Run Creek that might be contributing to the problems. (See id.) In response to the suggestion of further governmental investigation, DuPont immediately requested and USEPA agreed to discuss a "collaborative" effort to further investigate conditions in the area of Dry Run Creek. (See

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[11] DuPont's practices with respect to making public the company's knowledge of the toxicity of its products was addressed in detail in In re E.I. duPont de Nemours & Co., 918 F. Supp. 1524 (M.D. Ga. 1995) (court imposed over $100 million in sanctions against DuPont).

Exhibits 79 and 83.) Part of that collaborative effort included DuPont's agreement that it would disclose more fully the precise identities of each of the various types of chemicals it had dumped into the Dry Run Landfill that DuPont had not previously identified for USEPA. (See Exhibit 83.) Although DuPont had been monitoring C-8 levels in Dry Run Creek for years and had confirmed C-8 in the water each time, DuPont eventually identified C-8 as being only "possibly" present in the Dry Run Landfill in a list of dozens of chemicals that it sent to USEPA in late 1998 - almost a year after the USEPA had completed its draft Risk Assessment Report. (See Exhibit 83.)[12]

Because of USEPA's persistent concerns that something in the Dry Run Creek was killing hundreds of head of the Tennants' cattle, (see Exhibit 78),[13] DuPont also agreed to jointly fund an investigation into the health of the Tennants' cattle. Specifically, DuPont agreed in the Spring of 1999 to create a "Cattle Team" to "independently" investigate such issues. By that time, however, less than a few dozen of the Tennants' cattle were even still alive. The Cattle Team was comprised of three veterinarians selected by DuPont, including Greg Sykes, a DuPont employee who had been involved in DuPont's internal investigations into the effects of C-8 on animals for many years, (see Exhibit 24), and three veterinarians selected by USEPA. (See Exhibit 95.) Despite DuPont's knowledge that C-8 was a toxic animal carcinogen (as reenforced to DuPont by the recent C-8 monkey study results (see, e.g., Exhibits 87 and 166)), that the Tennants' cows were drinking out of Dry Run Creek, the information currently available to the Tennants does not indicate that anyone from DuPont ever disclosed such facts to the other members of the Cattle Team during the course of the Cattle Team's investigation. (See Exhibit 93.) Consequently, there is no evidence that the Cattle Team even considered the potential impact of C-8 on the Tennants' cattle, despite the release of the C-8 monkey study results to DuPont well before the final Cattle Team Report was released in December of 1999. (See Exhibit 109.) Again, DuPont kept completely silent on the C-8 issue and sat back and let the Cattle Team "independently" investigate the health of the Tennants' cattle, even though the USEPA-appointed Cattle Team members would never have any reason even to think to look at C-8.

Over the last several years, while DuPont was working with USEPA on their "collaborative" effort to address environmental problems in the area of Dry Run Creek, several of the Tennants have been in and out of the hospital suffering from respiratory problems, chemical

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[12] At around the same time, DuPont, again, ordered the Dry Run Landfill sedimentation pond drain opened, so that the foul-smelling contents could discharge directly into the Dry Run Creek where the few remaining head of the Tennants' "[c]attle were wallowing in the stream just beyond the fence." (See Exhibits 81 and 82.)

[13] At least two other local residents, including at least one current DuPont employee, also have complained that their cattle appear to have been harmed by something in Dry Run Creek. (See Exhibits 54 and 117.)

burns, and other health problems after having been exposed to fugitive air emissions and liquid discharge from DuPont's Dry Run Landfill. Moreover, despite installation several years ago of a leachate collection system that was supposed to prevent contaminants from the Dry Run Landfill from getting into the Dry Run Creek, DuPont's own monitoring reports confirm that C-8 is still getting into the Dry Run Creek with results as high as 87 ppb in the creek, as recently as the Summer of 1999, and as high as 27.6 ppb during the Fall of 2000 – readings more than twenty times DuPont's CEG for C-8 in water. (See Exhibit 134.) Thus, DuPont's own monitoring reports confirm that, despite installation of a purported leachate collection system, there is a continuing, ongoing discharge of high levels of C-8 from the Dry Run Landfill into Dry Run Creek.

V. DuPont Has Known That Its C-8 Wastes Have Leached Into Drinking Water.

In addition to DuPont's failure to disclose to the Tennants or the USEPA-appointed Cattle Team members the full extent of its knowledge regarding the nature, extent, and likely effects upon wildlife of the C-8 it has been releasing and continues to release into Dry Run Creek, the information currently available to the Tennants indicates that DuPont also has not fully disclosed to USEPA, WVDEP, local governmental entities, its neighbors, or the public its knowledge of the full extent of the impact of its C-8 wastes on local drinking water.

As part of its efforts to complete its RCRA Facility Investigation Report ("RFI Report") for the Washington Works, DuPont was required to investigate whether any of its former solid waste management units, including the three anaerobic digestion ponds that were closed in 1988, are contributing to any release of wastes onto neighboring properties and whether any wastes are exposing any persons to unreasonable health risks. (See Exhibits 98 and 99.) In connection with its RFI efforts, DuPont took more samples of the groundwater under the Washington Works site that it uses for drinking water at the Plant. (See Exhibits 10, 11, 76, and 99.) DuPont also arranged for the sampling of groundwater under the neighboring GE Plastics Plant that GE uses for its own plant drinking water. (See Exhibits 10 and 11.) Sampling confirmed C-8 in the Washington Works' drinking water as high as 3.3 ppb[14] and as high as 0.71 ppb in the neighboring GE Plastics drinking water supply. (See Exhibits 10, 11, 43, 76, 96, 99, 102, 104,

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[14] It is noted that, although DuPont had been sampling three drinking water wells at the Washington Works (wells 331, 332, and 336), when it came time to actually report the results to USEPA in its RFI Report, Dupont was careful to sample only the drinking water well that had previously yielded C-8 results less than 1 ppb (well 336), and conveniently did not even sample the wells that traditionally had yielded the higher C-8 results, nor did DuPont report these higher results in its RFI Report. (See Exhibits 76, 96, 99). Yet, when even the well with the C-8 readings traditionally below 1 ppb yielded a result of 1.9 ppb, DuPont fabricated a new 3.0 ppb "screening level" for C-8 to avoid having to reference any drinking water results exceeding DuPont's own 1 ppb CEG in its own plant drinking water. (See Exhibit 99).

106, 110 and 129.) DuPont even found C-8 as high as 0.8 ppb in the new Lubeck PSD drinking water wells, which are now located approximately two miles farther away from the Washington Works site. (See Exhibits 10-11, 40, and 41.)[15] Recent sampling of the private drinking water wells on the Tennants' property down-gradient from the Dry Run Landfill also has now confirmed C-8 in those drinking water wells. (See Exhibit 131.) DuPont has even investigated what C-8 levels might be present at various cities along the Ohio River, based upon DuPont's on-going releases of C-8 into the River from the Washington Works facility. (See Exhibits 40, 100, and 118.)[16] Approximately 24,000 pounds of C-8 also is discharged directly into the air every year from the Washington Works Site, although it is not clear that C-8 is actually permitted for such air discharge by DuPont. (See Exhibits 101 and 118.)

Thus, it is evident that the residents living in at least the area near DuPont's Washington Works facility, Letart Landfill, and Dry Run Landfill (the "DuPont Sites") may have been and may continue to be exposed to DuPont's C-8 through DuPont's on-going and continuous releases of C-8 into the air, land, and water at and/or around those Sites, (see Exhibit 80), including direct ingestion of C-8 in the C-8-contaminated drinking water extracted from wells at the Washington Works Plant, the neighboring GE Plastics Plant, the Lubeck PSD well fields, and private residential and agricultural properties near DuPont's Sites.[17] Local wildlife and the environment may be similarly exposed. Despite DuPont's knowledge for years of the nature, extent, and effect of these C-8 releases on human health and the environment, including the

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15 Sampling results from 1991 confirmed C-8 at 2.4 ppb in the new Lubeck wells with C-8 levels as high as 3.9 ppb in the tap water of several local, Lubeck-area homes. (See Exhibit 128.) Sampling in August of 2000 confirmed C-8 still present in the new Lubeck PSD wells at levels as high as 0.59 ppb. (See Exhibit 119.)

16 DuPont has been evaluating the levels of C-8 in the Ohio River, which is a source of drinking water for numerous communities, since at least 1982. (See Exhibit 15.)

17 In August of 2000, after the Tennants had made it known to DuPont that they had become aware of the C-8 in the Lubeck PSD wells, DuPont drafted a letter for the Lubeck PSD to send to its water customers to "disclose" the existence of the C-8. (See Exhibit 124.) In that letter, however, DuPont was very careful to refer only to the current C-8 levels in the current Lubeck PSD wells, and avoided any mention whatsoever of the earlier C-8 readings that were substantially above DuPont's 1 ppb CEG. (See id.) DuPont again was careful to avoid any public disclosure of its knowledge of earlier C-8 drinking water results that were well-above DuPont's 1 ppb CEG in recent statements provided to local Parkersburg newspapers, even though DuPont had received in November a draft of this letter referencing the higher C-8 levels. (See Exhibit 135.)

bioaccumulative/biopersistent nature of the material,[18] it appears that DuPont has allowed and continues to allow these releases to occur unabated for fear of not being able to continue to make its Teflon® products, if it cannot use C-8. This situation is particularly disturbing, given that DuPont apparently has known of ways to remediate C-8-laden soils since the early 1990s but because of the expense, chose to do nothing "pending further actions that may be dictated by the EPA for remediation of the Washington Works site." (See Exhibit 122.) Even more disturbing is the fact that DuPont has known for years that C-8 levels in the Washington Works and old Lubeck PSD drinking water wells far exceeded its own 1 ppb CEG but has done absolutely nothing in response. DuPont has chosen, instead, to focus either on current, somewhat lower C-8 levels, or to simply fabricate a totally new drinking water "screening level" of 3 ppb for the Washington Works Plant when faced with having to disclose to USEPA in its RFI report for the Washington Works the existence of C-8 in the Plant's drinking water at levels well above 1 ppb. (See Exhibits 99 and 124.)

VI. DuPont Should Be Ordered To Remediate Its C-8 Releases And To Immediately Shut Down Its Manufacturing Processes Involving C-8 Until Adequate Demonstrations Are Made That There Is No Unreasonable Risk To Health Or The Environment.

Over the years, DuPont has successfully avoided fully disclosing the nature and extent of the C-8 problem at its Dry Run Landfill by characterizing C-8 as an unregulated "non-hazardous" waste and/or substance under applicable law. Consequently, when the Federal and State agencies have asked questions about the nature and quantity of toxic wastes handled by DuPont at the Dry Run Landfill, DuPont has omitted any comprehensive discussion of C-8 on the grounds that it is not a "hazardous waste," "hazardous substance," or otherwise listed or regulated waste under current laws. DuPont shrewdly avoided any permit limits on its C-8 emissions and/or dumping at its Washington Works facility and Dry Run Landfill through similar corporate strategies. Thus, although DuPont has known for years that C-8 is an animal carcinogen and bioaccumulative/biopersistent substance, it has continued to knowingly dump thousands of tons of the waste into the environment at unlined, uncontrolled landfills and has allowed the waste to be disposed directly into the air, Ohio River, and local drinking water supplies, arguing that there has not been any improper disposal and/or release of any regulated material.

In addition, DuPont has been careful to refer to the chemical in conflicting, inconsistent ways in its filings with regulatory agencies - sometimes calling it "C-8," sometimes calling it "FC-143," sometimes calling it "PFOA," sometimes calling it "APFO," and sometimes calling it by its full chemical name - "ammonium perfluorooctanoate" - thereby making it difficult for the agencies to understand how all the information interrelates. As confirmed by USEPA's recent

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[18] DuPont's own employees even raised concerns about Teflon® customer exposure to C-8 as early as 1983. (See Exhibits 16 and 52.)

proposal to begin regulating 3M's previously-unregulated perfluorinated chemicals, DuPont's past corporate strategy for diverting regulatory attention away from C-8 should stop now.

Based upon the foregoing facts, the Tennants hereby respectfully request that your agencies intervene in the Tennants' pending Federal Court litigation and order the immediate investigation, assessment, containment, removal, and remediation of DuPont's on-going C-8 releases into the environment by virtue of the authority granted to your agencies under at least the following laws and their implementing regulations:

- The Toxic Substances Control Act, as amended, 15 U.S.C. §§ 2601-2692;
- The Federal Clean Water Act, as amended, 33 U.S.C. §§ 1251-1387;
- The Safe Drinking Water Act, as amended, 42 U.S.C. §§ 300f-300j-26;
- The Federal Clean Air Act, as amended, 42 U.S.C. §§ 7401-7671q;
- The Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901-6992k;
- The Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601-9675;
- The West Virginia Air Pollution Control Act, W.Va. Code §§ 22-5-1 through 22-5-18;.
- The West Virginia Water Pollution Control Act, W.Va. Code §§ 22-11-1 through 22-11-28;
- The West Virginia Groundwater Protection Act, W.Va. Code §§ 22-12-1 through 22-12-14;
- The West Virginia Natural Streams Preservation Act, W.Va. Code §§ 22-13-1 through 22-13-15;
- The West Virginia Solid Waste Management Act, W.Va. Code §§ 22-15-1 through 22-15-21;
- The West Virginia Hazardous Waste Management Act, W.Va. Code §§ 22-18-1 through 22-18-25; and

- The West Virginia Hazardous Waste Emergency Response Fund Laws, W.Va. Code §§ 22-19-1 through 22-19-6.

The Tennants also request that your agencies exercise their respective authority under the referenced laws to order DuPont to **immediately** cease and desist its C-8 releases into the environment, as addressed in this letter and to provide for immediate, appropriate medical care/testing/evaluation of the Tennants. The Tennants further request that DuPont's permit to operate the Dry Run Landfill be **immediately** revoked until adequate scientific demonstrations are made to prove that the C-8 releases have been abated, will not recur, and pose no unreasonable risk to human or animal health or the environment.

With respect to minimizing harm to the public health and the environment from future C-8 releases, the Tennants hereby specifically request that USEPA exercise its authority under the Toxic Substances Control Act to order DuPont to immediately cease all manufacturing activities using C-8, including DuPont's Teflon® manufacturing operations, until DuPont either confirms that it has stopped its usage of C-8 entirely or has made adequate scientific demonstrations to prove that its continued usage of C-8 (whether from 3M or any other source) does not pose an unreasonable risk of injury to health or the environment. In the meantime, the Tennants request that your agencies take these steps necessary to regulate C-8 emissions/releases to the environment. As mentioned above, the Tennants believe that such steps should include, at a minimum, including C-8 among the list of perfluorinated chemicals that USEPA proposed in October of this year to begin regulating under TSCA on the basis that the chemicals "may be hazardous to human health and the environment." (See Exhibit 123.)

VII. The Tennants Intend To Bring Citizen Suit Claims Against DuPont Under The CWA, TSCA, And RCRA If Appropriate Action Is Not Taken Immediately To Abate And Remediate DuPont's C-8 Releases From Its Washington Works Facility.

As explained above, DuPont has been and continues to discharge C-8 from its Washington Works Facility in Wood County, West Virginia into the air, groundwater, and Ohio River. Moreover, the C-8 discharged by DuPont has been contaminating and continues to contaminate the land, air, and human and animal drinking water supplies.

A. DuPont Is Violating The CWA.

Section 505(a)(1) of the Clean Water Act ("CWA") permits citizens to commence a civil action against "any person ... who is alleged to be in violation of (A) an effluent standard or limitation under this chapter." 33 U.S.C. §1365(a)(1). "Effluent standard or limitation" is defined under the CWA to include, among other things, "a permit or condition thereof issued under Section 1342 of this title," such as state-issued but federally-enforceable NPDES discharge permits. Id. at §1365(F). Based upon information currently-available to the Tennants, DuPont's NPDES permit for its Washington Works facility specifies that DuPont shall not discharge any

effluent in violation of applicable Water Quality Standards. (See, e.g., WV/NPDES Permit No. WV0001279, Conditions A.1 - A.10, C.12, and H.2). The West Virginia Water Quality Standards prohibit DuPont from discharging into surface or groundwaters any "materials in concentrations which are harmful, hazardous, or toxic to man, animal, or aquatic life." W. Va. Code St. R. tit. 46, §46-1-3.2 (2000). Based upon currently-available information, as described above, DuPont has been discharging and continues to discharge C-8 into surface and groundwaters in concentrations exceeding DuPont's own CEG for human drinking water and at concentrations that are otherwise harmful, hazardous, or toxic to man, animal, or aquatic life, constituting a continuing violation of the West Virginia Water Quality Standards, and thereby constituting a continuing violation of DuPont's NPDES permit terms and the CWA. See, e.g., 33 U.S.C. §§1311(a), 1342. Notice is, therefore, hereby provided that the Tennants, on behalf of themselves and a class of others similarly situated, intend to file suit against DuPont, pursuant to Section 505(a)(1) of the CWA, within sixty (60) days of this notice to obtain appropriate relief for the violations of the CWA referenced herein.

B. DuPont Is Violating TSCA.

Section 20(a)(1) of the Toxic Substances Control Act ("TSCA") permits citizens to commence a civil action against "any person . . . who is alleged to be in violation of [TSCA] or any rule promulgated under Sections 2603, 2604, or 2605 of [TSCA], or Subchapters II or IV of [TSCA]." 15 U.S.C. § 2619(a)(1). TSCA requires any "person who manufactures, processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment" to "immediately" inform USEPA of "such information, unless such person has actual knowledge that" USEPA has been adequately informed of such information. Id. at § 2607(e). TSCA also requires each person who manufactures or processes a chemical substance to comply with the regulations adopted by USEPA under TSCA governing the reporting to USEPA of certain research and adverse health effects information relating to such chemical substances. See id. at § 2607(a), (c), (d); 40 C.F.R. Parts 716 and 717. Failure to comply with such TSCA requirements constitutes a violation of TSCA. See 15 U.S.C. § 2614. As indicated above, the information currently available to the Tennants indicates that DuPont has not reported to USEPA all information within DuPont's possession regarding C-8 that is required to be reported to USEPA under Section 8(a), (c), (d), and (e) of TSCA, 15 U.S.C. § 2607 (a), (c), (d), and (e), such as the results of the C-8 monkey studies and the Tennants' allegations of adverse health effects among themselves, their cattle, and area wildlife arising from exposure to DuPont's C-8. Notice is, therefore, hereby provided that the Tennants, on behalf of themselves and a class of others similarly situated, intend to file suit against DuPont, pursuant to Section 20(a)(1) of TSCA, within sixty (60) days of this notice to obtain appropriate relief for the violations of TSCA referenced herein.

C. **DuPont's C-8 Releases From Its Washington Works Facility May Present An Imminent And Substantial Endangerment To Health Or The Environment Under RCRA.**

Section 7002(a)(1)(B) of the Resource Conservation and Recovery Act ("RCRA") permits citizens to commence a civil action against:

> [a]ny person ..., including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.

42 U.S.C. § 6972(a)(1)(B). As discussed above, DuPont's past and on-going disposal of C-8 into soil, water, and air from DuPont's Washington Works Facility has resulted in C-8 in soil, water, and air at and/or around the Washington Works Facility in amounts, levels, and/or concentrations which, based upon the currently-available information, may present an imminent and substantial endangerment to health or the environment. Notice is, therefore, hereby provided that the Tennants , on behalf of themselves and a class of others similarly situated, intend to file suit against DuPont, pursuant to Section 7002(a)(1)(B) or RCRA, within ninety (90) days of this notice to obtain appropriate relief for the imminent and substantial endangerment referenced herein.

Please confirm as soon as possible how your respective agencies plan to address our request for your involvement in this important public health and environmental matter. In that regard, please let us know if you will intervene in the Tennants' Federal Court proceedings or if

you would like to review any of the additional backup documentation maintained here at our Cincinnati offices. We would be happy to meet with you at your offices to discuss this matter in more detail. Thank you.

On behalf of the Tennants,

Robert A. Bilott

RAB/mdm
Enclosures
cc: Larry A. Winter, Esq. (West Virginia Counsel for the Tennants) (w/o encls.)
Paula Durst Gillis, Esq. (Counsel for DuPont) (w/ encls.)
(by **CERTIFIED MAIL NO: 70000600002406963531, RETURN RECEIPT REQUESTED & REGISTERED MAIL NO: R410009299, RETURN RECEIPT REQUESTED)**
Registered Agent for E.I. duPont de Nemours & Co., Inc. (w/o encls.)
(CT Corporation System, 707 Virginia Street, East, Charleston, WV 25301
by **CERTIFIED MAIL NO: 70000600002406963500)**

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Must type only employee number not name attached

PERSONAL & CONFIDENTIAL

C-8 BLOOD SAMPLING RESULTS

Births and Pregnancies

Current (IV) PPM C-8 in Blood (April 1981)	Status
0.45	Normal child - born June 1980. Transferred out of Fluorocarbons 4/79.
0.28	Normal child - born April 1981..
0.078	Normal child - born April 1981. Umbilical cord blood 0.055 ppm.
1.5	~~Five months pregnant~~. On pregnancy leave
0.013	~~Five months pregnant~~. Normal child - born August 19
2.5*	Child - 2 plus years. Unconfirmed eye and tear duct defect.
0.048	Child - 4 months. One nostril and eye defect. Babies blood 0.012ppm
2.007	Normal child - born July 1981

*Current blood level - in fluorocarbons area only one month before pregnancy.

RDL:ldr